



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4787-00

21 September 2000

[REDACTED] USMCR RET
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of the adverse fitness report for 1 November 1992 to 11 July 1993; modification of the fitness report for 12 to 27 July 1993 by removing the sentence: "Not observed report as MRO [Marine reported on] was not physically at this command during this 15 day period."; removal of your failures by the Fiscal Year 1995 and 1996 Reserve Major Selection Boards and by implication, restoration to active status in the Marine Corps Reserve; removal of the service record page 11 ("Administrative Remarks (1070)") entry dated 11 July 1993; removal of the endorsement dated 4 August 1993 on your reserve commissioning package; removal of the documentation (beyond the fitness report for 1 November 1992 to 11 July 1993) regarding your relief for cause; and correction of the Navy and Marine Corps (NAVMC) Form 763A ("United States Marine Corps Appointment Acceptance and Record") by replacing the deleted line 4 under block 21 ("prior service").

It is noted that the Commandant of the Marine Corps (CMC) has amended the fitness report for 1 November 1992 to 11 July 1993 to show "no" vice "yes" in item 17c (whether the Marine reported on has been the subject of a disciplinary action). It is also noted that the NAVMC Form 763A, as it appears in your Official Military Personnel File (OMPF), reflects entries, rather than a deleted line, on line 4 of block 21.

Your requests to remove the page 11 entry dated 11 July 1993, the endorsement dated 4 August 1993 on your reserve commissioning package, and the documentation (beyond the fitness report for 1 November 1992 to 11 July 1993) regarding your relief for cause were not considered, as no such documentation is in your OMPF.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures

applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 29 December 1995, and the advisory opinion from the HQMC Officer Career Planning, Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 12 February 1996, copies of which are attached. They also considered the Deputy Naval Inspector General (IG) for Marine Corps Matters/IG of the Marine Corps letters dated 26 September 1996 and 5 May 1999, each with enclosure; the CMC letter dated 15 May 2000, a copy of which is attached; and the Department of Defense IG electronic transmission of 18 September 2000, a copy of which is attached. Finally, they considered your rebuttal letters dated 19 January and 4 March 1996, each with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that no further correction of your fitness report record was warranted. They were unable to find that the reporting senior submitted the contested fitness report for 1 November 1992 to 11 July 1993 in reprisal for your complaints against him. Since they found no material defect in your performance record, they had no basis to remove your failures of selection for promotion, or restore you to active status in the Marine Corps Reserve. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

Copy to:
The Honorable Christopher J. Dodd
Joseph B. Gilbert, Esq.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

4787-00
IN REPLY REFER TO:
1610
MMER/PERB
DEC 2 1995

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED], USMCR

Ref: (a) Captain [REDACTED] DD Form 149 of 24 Sep 95
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11A, the Performance Evaluation Review Board, with three members present, met on 21 December 1995 to consider Captain [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 921101 to 930711 (CD)
- b. Report B - 930712 to 930727 (TR)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that Report A is incorrect and unfair on two grounds. First, he states that Item 17c incorrectly reports disciplinary action and that Section C falsely indicates that he had been counseled, not only on the report, but on two other occasions during the reporting period. Second, the petitioner states the evaluation fails to address his many accomplishments during the reporting period and believes the "negative incidents" reflected in Section C were motivated by a personality conflict between him and the Reporting Senior. Concerning Report B, the petitioner contends that Section C contains "negative language."

3. In its proceedings, the PERB concluded that, with one minor exception, both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner is incorrect in his belief that Captain [REDACTED] was erroneously included in Item 15b of Report A. Lieutenant Colonel [REDACTED]'s advocacy letter at enclosure (2) to reference (a) confirms the fact that Captain [REDACTED] was on full-time active duty. Thus, as required by subparagraph 4006.2b of reference (b), he was correctly compared with the petitioner. The copy of the report on which Lieutenant Colonel [REDACTED] failed to include Captain [REDACTED] (enclosure (4) to reference (a)) may very well have been an administrative oversight or error. Regardless, the report of record is correct.

4787-10

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED], [REDACTED] USMCR

b. Official page 11 entries can be made to record a formalized counseling session on performance; it does not mean formal charges under the Uniform Code of Military Justice are somehow appropriate or warranted. On page five of his statement, the petitioner admits a page 11 counseling entry was made in his Officer Qualification Record. If that entry was improperly made, then it was corrected by the Commanding Officer (as stated in enclosure (10) to reference (a)). Regardless, that entry did not negate the adversity of Report A; nor would that entry have been necessary to validate the adversity of performance recorded on Report A. Certainly, raising this argument counters the petitioner's contention that he was not counseled by the Reporting Senior during the period covered by Report A.

c. Brigadier General [REDACTED] agreed with the petitioner relative to his accomplishments and acknowledged his technical expertise. Unfortunately, it was the manner in which the petitioner got things done and how he treated others doing it that proved to be his downfall. Lieutenant Colonel [REDACTED] succinctly recorded this. The Reviewing Officer did not add any new adversity; he merely reinforced those problems identified by the Reporting Senior. Notwithstanding all of the petitioner's challenges and counter challenges, his arguments appear to be a "smoke screen" to divert the focus off the particulars of his own performance problems. Nothing furnished in support of reference (a) proves that either Lieutenant Colonel [REDACTED] or Brigadier General Shortal were somehow attempting to deny the petitioner his due rights and privileges.

d. Report A is the only documentation of relief for cause in the petitioner's official military personnel file. There are no copies of page 11 entries, no relief package requests to this Headquarters filed as derogatory material, and no record of actions under the Uniform Code of Military Justice. The bottom line issue is that the petitioner's superiors lost faith and confidence in his abilities and overall performance and he was relieved.

e. The petitioner is correct that Item 17c should have been marked "no." The PERB is effecting the necessary modification via insertion of a memorandum onto the performance ("P") section of the petitioner's microfiche record. This action is being taken to preclude loss of clarity by correcting the fitness report form itself.

f. Contrary to the petitioner's argument, there is absolutely nothing "negative" relative to the language in Section C of Report B. It is nothing more than a mere statement of fact.

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CAPTAIN [REDACTED] JSMCR

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Captain [REDACTED] official military record. The limited corrective action identified in subparagraph 3e is considered sufficient relief.

5. The case is forwarded for final action.

[REDACTED]
W. [REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1600
MMOA-4
12 Feb 96

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] SMCR

Ref: (a) BCNR Request for Advisory Opinion in the case of [REDACTED]
[REDACTED] SMCR of 5 Feb 96

1. Recommend disapproval of Captain [REDACTED] request for removal of his failures of selection.

2. Per the reference, we reviewed Captain [REDACTED] record and his petition. Captain [REDACTED] failed selection on the FY95 and FY96 Reserve Major Selection Boards. Captain [REDACTED] successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the 921101-930711 fitness report and removal of the language "Not observed report as MRO was not physically at this command during this 15 day period" on his 930712-930727 fitness report. He also requests removal of his failures of selection.

3. In our opinion, removal of the contested reports would remove some jeopardy from the record, but would not add sufficient strength to make the record competitive with selected contemporaries. They contain significant less competitive Value and Distribution, and Section B marks. However, we note areas of competitive concern *in addition to the two* contested reports which may have contributed to his failure of selection:

a. **Section "B" Marks.** The record reflects trends of less-than-outstanding Section B marks in Administrative Duties, Handling Officers, Handling Enlisted, Cooperation, Judgment, Leadership, and Personal Relations.

b. **910810-920519 Fitness Report.** The fitness report singles out Captain [REDACTED] excellent in Value and Distribution with three officers ranked above him. Additionally the report marks him less-than-outstanding in Handling Officers, Handling Enlisted, Training Personnel, Military Presence, Cooperation, Judgment, Leadership, and Personal Relations. Less competitive ranking on this report is significant since it is a Change of Duty Report and is received when serving in his primary MOS.

c. **Performance Decline.** The record reflects a performance decline while a Captain serving as the Assistant Operations Officer under the same Reporting Senior. On the fitness report for the period 900802-901031, Captain [REDACTED] was ranked 1 of 3 in Value and Distribution. On the subsequent report for the period 901101-910809, he was ranked 4 of 6 with an additional less-than-outstanding Section B mark in Personal Relations.

Subj: BCNR PETITION [REDACTED] SR

[REDACTED]
[REDACTED]

Lieutenant Colonel, U. S. Marine Corps
Head, Officer Career Planning,
Counseling and Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

21787-00

IN REPLY REFER TO:

1000
CMC
15 MAY 2000

FIRST ENDORSEMENT

From: Commandant of the Marine Corps
To: Board for Correction of Naval Records

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS PETITION OF CAPTAIN
[REDACTED] 3502 USMC (RET.)

Encl: (1) [REDACTED] Petition, dtd 29 Apr 00

1. Forwarded.
 2. I have known [REDACTED] many years and he has served under my command. I request that the Board give his petition expedited consideration.
- [REDACTED]

JUN 6 2000

George, Brian J

From: [REDACTED]@osd.mil]
Sent: Monday, September 18, 2000 2:45 PM
To: 'george.brian@hq.navy.mil'
Subject: Call from Captain Walsh

Sensitivity: Private

[REDACTED]
This confirms our 18 Sep 00 conversation regarding the complaint Captain [REDACTED] filed with the DoD Inspector General. Our investigation, Defense Hotline case number 76025, was closed on 21 Jun 00. [REDACTED] allegations were not substantiated. Please let me know if you need any further information.

[REDACTED]
[REDACTED]
(7) [REDACTED]
(8) [REDACTED]